



- (i) a description of such site-specific management actions as may be necessary to achieve the plan's goal for the conservation and survival of the species;
- (ii) objective, measurable criteria which, when met, would result in a determination, in accordance with the provisions of this section, that the species be removed from the list; and
- (iii) estimates of the time required and the cost to carry out those measures needed to achieve the plan's goal and to achieve intermediate steps toward that goal.

16 U.S.C. 1533(f)(1)(B).

WHEREAS, Center for Biological Diversity sent a letter to Defendants on November 25, 2019 stating their intent to file suit to compel the Service to develop and implement a recovery plan for the Houston toad pursuant to 16 U.S.C. § 1533(f)(1);

WHEREAS, the Service responded on February 10, 2020 and indicated it anticipated completing a revised recovery plan by the end of fiscal year ("FY") 2021;

WHEREAS, on February 24, 2020, Center for Biological Diversity filed its complaint in this case, alleging that the Service's "failure to develop and implement a legally valid recovery plan" for the Houston toad violated the Endangered Species Act, 16 U.S.C. §§ 1533(f), and/or the Administrative Procedure Act ("APA"), 5 U.S.C. § 706(1);

WHEREAS, the parties, through their authorized representatives, and without any admission or final adjudication of the issues of fact or law with respect to Plaintiff's claims, have reached a settlement that they consider to be a just, fair, adequate, and equitable resolution of the disputes set forth in Plaintiff's complaint;

WHEREAS, the parties agree that settlement of this action in this manner is in the public interest and is an appropriate way to resolve the dispute between them;

NOW, THEREFORE, the parties hereby stipulate and agree as follows:

1. Pursuant to Section 4(f)(4) of the ESA, 16 U.S.C. § 1533(f)(4), as amended, the Service agrees to submit a notice of availability of the draft revised recovery plan for the Houston Toad to the Federal Register by May 31, 2021. The Service also agrees to complete a final revised recovery plan for the Houston Toad by May 31, 2022 and post it on its website.

2. The Order entering this Agreement may be modified by the Court upon good cause shown, consistent with the Federal Rules of Civil Procedure, by written stipulation between the parties filed with and approved by the Court, or upon written motion filed by one of the parties to the Agreement and granted by the Court. In the event that any party to this Agreement seeks to modify the terms of this Agreement, including the deadlines specified in Paragraph 1, or in the event of a dispute arising out of or relating to this Agreement, or in the event that any party to this Agreement believes that any other party has failed to comply with any term or condition of this Agreement, the party seeking the modification, raising the dispute, or seeking enforcement shall provide the other parties to this Agreement with notice of the claim or modification. The parties to this Agreement agree that they will meet and confer (either telephonically or in person) at the earliest possible time in a good-faith effort to resolve the claim before seeking relief from the Court. If the parties to this Agreement are unable to resolve the claim themselves, the aggrieved party may seek relief from the Court. In the event that Defendants fail to meet the deadline in Paragraph 1 and have not sought to modify it, the Plaintiff's first remedy shall be a motion to enforce the terms of this Agreement, after following the dispute resolution procedures described above. This Agreement shall not, in the first instance, be enforceable through a proceeding for contempt of court.

3. Plaintiff reserves its right to request attorneys' fees and costs from Defendants, and agrees that any such request shall not exceed \$17,500 for attorneys' fees and costs incurred as of the effective date of this Settlement Agreement. Defendants reserve their right to contest Plaintiff's entitlement to recover fees and the amount of any such fees and do not waive any objection or defenses they may have to Plaintiff's request. Plaintiff requests that it be given 90 days from this Court's approval of this Agreement to file a potential motion for costs and attorneys' fees pursuant to F.R.C.P. 54(d) so that it may seek to resolve this issue with Defendants without this Court's further involvement.

4. The parties agree that this Agreement was negotiated and entered into in good faith and that it constitutes a settlement of claims that were vigorously contested, denied, and disputed.

By entering into this Agreement, the parties waive any claim or defense, except as expressly provided herein.

5. No provision of this Agreement shall be interpreted as, or constitutes, a commitment or requirement that Defendants are obligated to spend funds in violation of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other law or regulation.

6. No provision of this Agreement shall be interpreted to or constitute a commitment or requirement that the Defendants take action in contravention of the ESA, the APA, or any other law or regulation, either substantive or procedural. With respect to the procedures to be followed in developing the final recovery plan and with respect to the substance of the final recovery plan, nothing in this Agreement shall be construed to limit or modify the discretion accorded to the Service by the ESA, APA, or general principles of administrative law. To challenge any recovery plan issued pursuant to Paragraph 1, Plaintiff must file a separate action. Defendants reserve the right to raise any applicable claims or defenses to any substantive challenge raised by any party.

7. The Agreement contains the entirety of the agreement between the parties, and is intended to be the final and sole agreement between them. The parties agree that any prior or contemporaneous representations or understanding not explicitly contained in this written Agreement, whether written or oral, are of no further legal or equitable force or effect.

8. No part of this Agreement shall have precedential value in any litigation or in representations before any court or forum or in any public setting. No Party shall use this Agreement or the terms herein as evidence of what does or does not constitute a reasonable timeline for issuing a recovery plan for a species.

9. Nothing in this Agreement shall be construed or offered as evidence in any proceeding as an admission or concession of any wrongdoing, liability, or any issue of fact or law concerning the claims settled under this Agreement or any similar claims brought in the future by any other party. Except as expressly provided in this Agreement, none of the parties waives or relinquishes any legal rights, claims, or defenses it may have. This Agreement is executed

for the purpose of settling Plaintiff's Complaint, and nothing herein shall be construed as precedent having preclusive effect in any other context.

10. The terms of this Agreement shall become effective upon entry of an order by the Court (similar in substance to the attached Proposed Order) approving the Agreement.

11. Upon approval of this Agreement by the Court, all counts of Plaintiff's complaint shall be dismissed with prejudice. Notwithstanding this dismissal, however, the parties to this Agreement hereby stipulate and respectfully request that the Court retain jurisdiction to oversee compliance with the terms of this Agreement and to resolve any motions to modify such terms. *See Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375 (1994).

12. The undersigned representatives of each party certify that they are fully authorized by the party or parties they represent to agree to the Court's entry of the terms and conditions of the Agreement and do hereby agree to the terms herein.

DATED: December 9, 2020

Respectfully submitted,

JEAN E. WILLIAMS  
Deputy Assistant Attorney General

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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

CENTER FOR BIOLOGICAL DIVERSITY,

Plaintiff,

v.

DAVID BERNHARDT, in his official capacity  
as Secretary of the United States Department of  
the Interior, et al.

Defendants.

Case No.: 1:20-cv-00529-TNM

**[PROPOSED] ORDER GRANTING STIPULATED SETTLEMENT AGREEMENT**

Upon consideration of the Parties' Stipulated Settlement Agreement and for good cause,  
it is hereby:

**ORDERED** that the Agreement executed by the parties is hereby incorporated into this  
Order;

**IT IS FURTHER ORDERED** that this Court shall have continuing jurisdiction to enforce  
this Order and the terms of the Agreement herein consistent with the terms of the Agreement;

**IT IS FURTHER ORDERED** that this case is hereby **DISMISSED**.

Dated: \_\_\_\_\_, 2020

By: \_\_\_\_\_  
TREVOR N. MCFADDEN  
UNITED STATES DISTRICT JUDGE